

### **REMARKS**

Claims 1-6 and 8-20 are currently pending, wherein claims 1-6 and 9-20 have been amended. Claim 7 has been canceled. Applicants respectfully request favorable reconsideration in view of the remarks presented hereinbelow.

In paragraph 3 of the Office Action ("Action"), the Examiner rejects claims 1-4, 7, 9, 10, 14-18, and 20 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,873,268 to Lebel et al. ("Lebel"). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. § 102, the cited reference must teach each and every claimed element. In the present case, claims 1-4, 7, 9, 10, 14-18, and 20 are not anticipated by Lebel because Lebel fails to disclose each and every claimed element as discussed below.

Independent claim 1 defines a health control system. The system includes, *inter alia*, a communication device for acquiring health information indicating the health condition of a target person, and an information processing apparatus capable of communicating with said communication device for health control. The communication device includes: a dialogic diagnosis unit for carrying out dialogic diagnosis on the target person, accepting a reply to a question for dialogic diagnosis, and outputting reply information indicating said accepted reply; a detection unit for detecting a physiological condition of the target person and outputting the detected physiology information; and a processor configured to transmit the acquired health information and identification information identifying the target person to an information processing apparatus, wherein the acquired health information includes the reply information and the physiology information. The information processing apparatus capable of communicating with said

communication device for health control includes a processor configured to: evaluate the health condition of said target person on the basis of the health information received from the communication device; and notify a result of the evaluation separately to a target person specified by the identification information received from said communication device and to said doctor carrying out said diagnosis on said target person. In addition, the communication device is maintained external to the body of the target person.

Lebel discloses an implantable infusion pump configured to communicate with an external device. Although the implantable infusion pump of Lebel is configured to exchange medical telemetry messages with an external device, nowhere in Lebel is there any disclosure of a diagnosis unit for carrying out *dialogic* diagnosis on the target person as claimed. In addition, the infusion pump of Lebel is not maintained external to the body of the target person as claimed. Accordingly, independent claim 1, and claims 2-4, 9, and 10 which depend therefrom, are patentable over Lebel because Lebel fails to disclose each and every claimed element.

Independent claim 18 defines a health control system that includes, *inter alia*, a communication device maintained external to the body of the target person, the communication device including a dialogic diagnosis unit for carrying out dialogic diagnosis on the target person, accepting a reply to a question for dialogic diagnosis, and output reply information indicating said accepted reply; a detection unit for detecting a physiological condition of the target person and outputting the detected physiology information; and a processor configured to transmit the acquired health information and identification information identifying the target person to an information processing apparatus, wherein the acquired health information includes the reply information and the physiology information. Accordingly, independent claim 18 is patentable over Lebel because

Lebel fails to disclose each and every claimed element as discussed above with respect to claim 1.

Independent claims 14 and 20 define an information processing apparatus. The apparatus includes, *inter alia*, means for receiving target person identifying information for identifying a target person for diagnosis by a doctor and health information indicating the health condition of said target person; means for evaluating the health condition of said target person specified by said target person identifying information, on the basis of said health information received by said receiving operation; and notifying means for notifying the evaluation result by said evaluating operation separately to said target person and said doctor carrying out said diagnosis on said target person.

In rejecting claims 14 and 20, the Examiner asserts that Lebel discloses an information processing apparatus as claimed inasmuch as Lebel discloses a device that receives patient identifying information and medical telemetry which may be used to alarm the patient and/or other monitoring medical personnel. However, nowhere in Lebel is there any disclosure of notifying the result of the evaluation to the target person *and* the *doctor* who is carrying out diagnosis of the target person's health condition. Accordingly, claims 14 and 20, and claims 15-17 which depend therefrom, are patentable over Lebel because Lebel fails to disclose each and every claimed element. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-4, 9, 10, 14-18, and 20 under 35 U.S.C. § 102(e).

In paragraph 5 of the Action, the Examiner rejects claims 5, 6, 8, and 19 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lebel in view U.S. Patent Application Publication No. 2002/0077841 to Thompson et al. ("Thompson"). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. § 103, the Examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness three criteria must be met.

First, there must be some motivation to combine the cited references. Second, there must be a reasonable expectation of success. Finally, the combination must teach each and every claimed element. In the present case, claims 5, 6, 8, and 19 are not rendered unpatentable by the combination of Lebel and Thompson because the Examiner fails to establish a *prima facie* case of obviousness as discussed below.

Claims 5, 6, 8, and 19 each define a health control system that includes, *inter alia*, a communication device for acquiring health information which is maintained external to the body. Accordingly, claims 5, 6, 8, and 19 are patentable over Lebel because Lebel fails to disclose or suggest a communication device as claimed which is maintained external to the body.

Thompson discloses an apparatus and method for managing chronic home care of patients with one or more implanted medical devices. However, Thompson fails to overcome the deficiencies of Lebel. Since Lebel and Thompson both fail to disclose or suggest a health control system that includes a communication device for acquiring health information which is maintained external to the body as claimed, the combination of these two references cannot possibly disclose or suggest said element. Therefore, even if one skilled in the art were motivated to combine Lebel and Thompson, which Applicants do not concede, the combination would still fail to render claims 5, 6, 8, and 19 unpatentable because the combination fails to disclose each and every claimed element. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 5, 6, 8, and 19 under 35 U.S.C. § 103(a).

In paragraph 6 of the Action, the Examiner rejects claims 11 and 12 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lebel in view of U.S. Patent Application Publication No. 2002/0082665 to Haller et al. ("Haller"). Applicants respectfully traverse this rejection.

Claims 11 and 12 variously depend from independent claim 1. Therefore, claims 11 and 12 are patentable over Lebel for at least those reasons presented above with respect to claim 1. Haller discloses a system and method for monitoring the performance of an implantable medical device implanted within a body of a patient, monitoring the health of the patient, or remotely delivering a therapy of patient through the implanted device. However, Haller fails to overcome the deficiencies of Lebel.

Since Lebel and Haller both fail to disclose or suggest a health control system that includes a communication device for acquiring health information which is maintained external to the body as claimed, the combination of these two references cannot possibly disclose or suggest said element. Therefore, even if one skilled in the art were motivated to combine Lebel and Haller, which Applicants do not concede, the combination would still fail to render claims 11 and 12 unpatentable because the combination fails to disclose each and every claimed element. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 11 and 12 under 35 U.S.C. § 103(a).

In paragraph 7 of the Action, the Examiner rejects claim 13 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lebel in view of Thompson, further in view of Haller. Applicants respectfully traverse this rejection.

Claim 13 depends from independent claim 1. Therefore, claim 13 is patentable over Lebel, Thompson, and Haller for at least those reasons presented above. More specifically, neither Lebel, Thompson, nor Haller disclose or suggest a health control system that includes a communication device for acquiring health information which is maintained external to the body as claimed.


Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 12 under 35 U.S.C. § 103(a).

The application is in condition for allowance. Notice of same is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Penny Caudle (Reg. No. 46,607) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: June 28, 2006

Respectfully submitted,

By   
Michael R. Cammarata  
Registration No.: 39,491  
BIRCH, STEWART, KOLASCH & BIRCH, LLP  
8110 Gatehouse Road  
Suite 100 East  
P.O. Box 747  
Falls Church, Virginia 22040-0747  
(703) 205-8000  
Attorney for Applicants